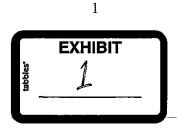
UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

§	
§	
§	
§	
§	
§	CIVIL ACTION NO. 1:08-cv-803JRN
§	
§	
§	
§	
§	
§	
§	
	ക്ക ക്ക ക്ര ക്ര ക്ര ക്ര ക്ര ക്ര ക്ര ക്ര

SWORN DECLARATION OF JACQUELYN PEDIGO

Pursuant to 28 U.S.C. § 1746, the undersigned declares as follows:

- 1. "My name is Jacquelyn Pedigo. I am over the age of 18 and am in all ways competent to attest to the facts set forth herein. The facts in this Declaration are within my personal knowledge and are true and correct.
- 2. I worked for Alligator Grill from approximately October 2004 to August 2008. Alligator Grill is a Cajun-style restaurant located in Austin, Texas. I worked as a waitress and bartender for Alligator Grill from approximately October 2004 to August 2005. From August 2005 to August 2008, I worked the majority of my shifts as a bartender. As a server, I performed the traditional duties of a waiter, i.e. took customers' food and drink orders, ran food to the customers' tables, refilled drinks, and made recommendations on food and beverages. As a bartender, I interacted with customers at the bar, took their drink orders, filled the orders, etc.
- 3. As both a server and a bartender, Alligator Grill paid me by check every two weeks. Attached to this Declaration as Exhibit 1-A are a few of my paychecks. As shown on



these paychecks, Alligator Grill paid me a direct wage of \$2.13 per hour, plus a portion of the tips I made during the pay period. No one from Alligator Grill explained the "tip credit" to me or notified me that Alligator Grill would use my tips to make up the difference between the \$2.13/hour I was paid and the full statutory minimum wage. However, I was not allowed to keep all of the tips given to me by the customers. Rather, Alligator Grill required me, and all of the other servers (i.e. waiters and bartenders), to contribute 4% of my total sales to a mandatory tip pool which was distributed to other restaurant employees – including hostesses, expediters, dishwashers, prep cooks, and non-service bar backs.

- 4. Alligator Grill's policy required its servers to contribute 4% of their tips to a mandatory tip pool. I was shown a copy of the employee policy manual or handbook, which confirmed that the servers were required to tip out 4% of our net sales. A copy of the tip out policy is reflected on page 5 of the Team Member Manual, attached to Plaintiffs' Motion for Conditional Certification as Exhibit 6.
- 5. Throughout the entire duration of my employment at Alligator Grill, the tip pool monies were distributed to the following employee positions: expediters (a/k/a/ 'expos'), hostesses, dishwashers, and prep cooks. Later on, Alligator Grill created a position called 'bar back' whose position was solely to support the bartenders keep the bar clean and stocked with ice, beer, liquor, and glasses. The bar back was 'non-service' because he did not have any interaction with the customers and was not allowed to serve drinks to the customers. The bar backs also received a part of the tip pool. I know that each of these positions received part of the tip pool because I personally spoke with employees who worked in each of these positions and have verified this information with them. In addition, I have seen pay checks for each of these positions. When I worked there, each of these employees would receive two checks every pay

period, one for his/her hourly wage, and another check for their share of the tip pool monies.

There was a mandatory meeting I attended in which the tip pool was brought up and Dack

Zerger, an assistant manager, told everyone the tip share would never change and if we did not like it to find another job.

- 6. I understand that Steve Wimberly, the owner, and Paul Blandford, the General Manager, have both testified in this case that Alligator Grill employed bus boys or "bussers" to assist the wait staff. That is not true. At no time during the four years that I worked at Alligator Grill did we have bussers. The waiters were required to bus their own tables. The waiters would clear dirty dishes, glasses, and silverware from the customers' tables, take them to the kitchen, scrape the uneaten food off the plates, and put them on the counter or dish rack for the dishwashers. The dishwashers would then wash the dirty items. I also understand that Paul Blandford testified that the dishwashers would, on occasion, go out into the main part of the restaurant and 'bus' the tables. While he testified that this was done on rare occasions, I never had a dishwasher bus my tables and never saw a dishwasher, or any other employee, bus tables for any other server.
- 7. When I worked more than forty (40) hours in a workweek, Alligator Grill would pay me \$3.19 per hour as an overtime wage.
- 8. Alligator Grill also made its servers pay for the uniforms we were required to wear when we were working. When I was first hired, I purchased two shirts from Alligator Grill and I had to pay them \$7.50 per shirt. When I needed a replacement uniform, I would purchase another one from the manager on duty. If I did not have any money with me, I would pay for it at the end of my shift with the tips I earned.

- 9. The mandatory tip out was the subject of a lot of talk among the servers. In addition, I asked the General Manager, Paul Blandford, about the tip pool and why we were required to share our tips with back of the house employees like the dishwashers and prep cooks. He told me that this was the company's policy and, if I did not like it, that I could find another job.
- 10. I know that the 4% tip pool policy, uniform policy, and overtime wage policy applied to all servers at Alligator Grill (i.e. not just me). There was only one employee handbook or policy book during the time that I worked there and it applied to all waiters and bartenders. I have also had conversations with many of the waiters and bartenders who advised me that they also had to pay 4% of their tips into the mandatory tip pool. I specifically recall talking to Jason Wiest, Joshua Roberts, Kasey Herber, and several others whose names I cannot recall right now, and they all confirmed that they were required to participate in the same policy.
- 11. When I found out that the restaurant's tip pool practice, overtime wage policy, and uniform policy violated federal wage laws, I decided to file this lawsuit to recover the monies owed to me. While other employees who worked with me became aware of the lawsuit (and eleven others decided to join), I believe other servers would join this case if they knew about it and were given the chance to join. However, I do not know the names and addresses of the servers who worked at the restaurant in the last few years.
- 12. I have read this Declaration. I swear under penalty of perjury that the facts recited therein are true and correct."

Dated: December 10, 2009

4

AIU	ים מי	RILL				- Alexander	CATION	SICK SOCK	V.SED. NO.	FTAFT	PERIOD	4399 END PERIOD)
ID.			EMPLOYEE!	JAME		DATE V	· ·	GIOK GEOG					1
	- 3350	ការកសាស ព	. PEDIGO .	•		7/2/08	0.00	0.00		<u>'6/9/</u>	08 1	6/22/00 BENEFI	15 TS
	EAFININ				TAXEB		<u> </u>	DEDUCTIO			CODE	AMDUNT	YEAR-TO-DATE
HATE		פתכו	AMOUNT	CODE	WITHHELD	YEAR TO DATE	CODE	TALLONA	YEAR-TO-D	MIE	ـــرمونيانيا	74800141	V— 47 (F F7)
mi		, ,		1		٠,	ľ	នុព្ភ ពព	Ś	0.00	i	\$0.00	\$0.00
\$2.	13 5	7.07	·\$121,59	FIGA:	•		1 }	, , , , ,					
\$53D.	00	[3	MED.	\$1.D. B9	\$151.08			•	4	٠.		
•	1	1		6.5.	\$45.59	, \$645.97		_	. •				
	ł		•	HEDERAL.	. \$64.DB	\$209.28	[· [1	1			, "
				-SYATE	L		ŀ ' ·	•		۱.		٠. ٠	
		,		["""			[[4*	- 1			
	•	ļ					1 -1	,		٠			•
		.1		1 1	•	•	[. [†		\$0.00	,
		_		ان سادرا)	•		` `	•	<u>-</u>	!
	•			TODAL .			[, _'.		,		GROSSAI	EAR-TO-DATE	VETYEAR-TO-DATE
						'	· · · · · · · · · · · · · · · · · · ·			- 1	_	1,750.92	\$144.59
		.]		1	:		1 1	• .				, , , , , , , , , , , ,	NET PAY
							 			•			
	- 5	7.07	\$121.59	<u> </u>	\$121.5 6	1 .		¢0.00					\$0,-00
च्या	1		•		·	1	1			• •	٠ ٠٠ ١	' <u>-</u>	
••	·			•		_			•	, •	mp 1-11-1 -5001	Jum 11	•
•					and the second feet	-	of the state	deservation in the	Section 1	4 14	riid.	رائي اين يامي	A CONTRACTOR OF THE PARTY OF THE
洲域	小堂	企业股					南龙山			بسوسية		., 4399 .	
-	Print No.				建即股份 市	自然终于 。	海域	COLONIAL	BANK	¥. ;		,	1
ar a co	也都	為條件			The state of the s	Section of	海拔的	1.501.W.671 1.51.61.61.6					٠;٠
	THE	水區園	GATOR			efficie fe engine bir en en en	即用证	Same blackary recy.	erfannin metali Stjeneni lenini	70			•
130	-	:300 216	GATEUR LAMALERY NAIX GROSS V444 6117	D de la compa		Section 1	阿里斯		16-10 () - 10 () 1	Å.			TAMBENT
# 4.	常是	FREE	NUIN NUIN			Residence of the second	1.010.00				د دره الموسوسية برويت	•	· •
#4			displaying the distant	Antendus (A STATE OF THE PARTY OF THE PAR		ditter ii.		7/2/08.7		•		\$0.90
dika.			ter per	建设		The state of	Little Little		pin and the second		•		7
		111		-	and the state of t	mistration (services of the services)	課的中人		m m sign				y
ن نگه	arra esta	The state of the s	Participation of the second	en en en en en		Harris Herrer	۱۹۰ ۱ ۲۰۰۰ ا ور ۱ ۲۰۰۰ اور ۱۳۰۰ اور ۱۳۰ اور ۱۳۰ اور	in part of the second	ren e estrució est			-	•
يدورو	ens.A	20.00		the spiritual of					· · · · · · · · · · · · · · · · · · ·	· .			
		1				THE PARTY OF THE P	leave.	eriniserin		;			
	٠;:			A STATE OF THE PARTY OF THE PAR		State of the state			•			•	
+ +	,	and seeding	Marin Allera	alia di								٠.	٠,
ALBELD.	70 C	PEDIGO		• • • •	و الداسو			.,	•				
دادنىچ.					;	·				•			
	التحقيدي			100	edition .	· ** # * 1	•					•	_
				7-21							ī		•
Lai		78704			• 1						T .		

EXHIBIT

Balgo

I-A

P0001

	GATOR G	RILL	- EMELTATE INV	VE		DATE W	O O O	o no	NS VEAR-TO-DATE		3/16/08 BENEFI AMOUNT	S YEAR-TO-DATE
	ALIARES	OURE	AMOUNT .	CODE	CLEHHTIN	YEAR-TO-DATE	CODE	AMDUNT 50.00	\$0.00		\$0.00	50.00 ·
276	\$2.73	64.06	\$136.45	HED. S.S. PEDERAL	\$12.17 \$52,04 \$72.24	\$340-3	2					
	·			STATE				·		GROSS	\$0.DI	NET YEAR TO DATE
		-p=	w 100 0000 Ecc.	LOCAL					25 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2		\$901.87	\$40.39 NET PAY \$0.00
	TOTAL	64'.06	\$136.X	15	\$136-0	15		\$0.		· · ·		

	- -	<u></u>		•				•				432
LL	GATOR	GRILL	·			DATE . W	GATKIN	SICK, ' SDOIA	LSEC. NO. ETA	HT PERIOD	END PERIOD	}
PLUY	(ED		EMPLOYEE N	AME _		1 alayan 1 - 11	0.00	D. DO		6/08	6/B/08	ns
		ALIETÝA T	r PROTED		TAXES	6/18/08		DEDUCTIO	NS VEAR-TO-DATE	CODE	AMOUNT '	YEAR-TO-DATE
	RATE	HOURS	ÄMCUNT	· CODE ···	WITHHELD .	YEAR TO DATE	CODE.	\$0.00	\$0.0		ទុំ០.០b	\$6.00
PM.	\$2.13 \$740.00	50.91	\$ 1. 00.12	FICA MED. S.G. FEDERAL	\$12.31 \$52.61 \$43.52	\$140.39 \$599.38 \$745.20						
			٠.	STATE							\$0.00	
	•			TOCAL							\$1,529.36	NET YEAR-TO-DATE \$144.5: NET PAY
					5106.44	<u> </u>	<u></u>	\$0.00)			\$0.D
	TOTAL	50,91	\$108.4	<u> </u>		_	•	<u> </u>	_J ·			·

MPLOYEE)		EMPLOYEE N	NAME DATE VACATION SIC					ALSEC, NO. STAFF	PERIOD	END PERIOD	}-
		לוענדים דור אויין א	C. PEDIGO	•	•	5/4/08	0.00	0.00	5/22	/0a	5/25/08	
		MINGS	<u>0, 1,111,100</u>		TAXES			DEDUCTIO			BENETT	
DE R	ATE	HOURS	AMQUAT	CODE	. AMITHURELD .	YEAR-TO-DATE	CODE	TRUCINA	YEAR-TO-DATE		AMOUNT	YEAR-TO-
PM	\$2.13.		\$125.69	FICA				` \$0.00	\$0.00	'.	\$0.00	.6
ģ	660.00	٠,	-	MED.	\$11.39	\$127.88			,			
. '			1	5.6.	\$48.71	\$546.77			,	•		
.			٠. ا	FEDERAL	\$65.59	\$701.58		<u>'</u>			-1	
1.	1	' . ŀ	, , l	STATE .	•] .	ļ. ·	1		
			·		_		, .				٠,	. '
}				•		•				· -	\$0.00	
			,	LDCAL		٠,	. ,			GROSSYI	AR-TO-DATE N	ET YEAR-TO
		•		·		**,		. I			3,520.92	81 NET PAN